

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Dennis Gibson on April 25, 2006

DATED: May 16, 2006

On Tuesday, April 25, 2006, Benito Romano and Sharon Blaskey, in Willkie Farr & Gallagher LLP's ("Willkie") capacity as counsel to the Audit Committee, interviewed Dennis Gibson. Mr. Gibson was represented by counsel, John Kirby of LaBella & McNamara LLP. Also in attendance was Donielle Evans of KPMG and Brian Faerstein of Willkie. The interview took place in a conference room on the third floor of the San Diego City Administration Building and lasted approximately three hours.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Dennis Gibson, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

At the outset of the interview, Mr. Kirby inquired about the basis of the investigation, explaining that he and Mr. Gibson understood that Mr. Gibson was being interviewed as a condition of City employment. Mr. Romano clarified the circumstances and purpose of the City of San Diego's (the "City") creation of the Audit Committee, noting that information obtained during the course of the interview would be used, if relevant, in our analysis of the issues and would be reflected in an Audit Committee report. Mr. Romano explained that, although Willkie does not represent Mr. Gibson, we would be treating the communication of information during the interview as confidential until the release of the Audit Committee's Report, after which it seems likely that any privilege attaching to our interview memoranda will be lost. Mr. Romano stated that the interview was not a privileged communication, though we do ask that Mr. Gibson keep it confidential. Mr. Romano further explained that, if requested, we would provide information from the interview to the SEC, the U.S. Attorney's Office or the City's outside auditor, KPMG, so it is important that Mr. Gibson be accurate and truthful. Mr. Romano emphasized that Mr. Gibson should seek clarification of a question or issue at any time.

Background

Mr. Gibson is currently the City Ballpark Administrator. In this capacity, he manages the lease agreement for Petco Park, the Padres' baseball stadium. He is employed by the City and he reports to the Deputy Chief of the Department of Public Works, Richard Haas.

Prior to this position, Mr. Gibson worked in Mayor Dick Murphy's office for four years, between January 2001 and January 2005. He left after Mayor Murphy's first term because, at the outset of his service, he had decided to only commit to four years. Before serving in the Mayor's Office, Mr. Gibson worked for two years as the Business Operations Manager for the City Water Department, primarily dealing with water supply issues. Prior to that, he worked for three years in the City Manager's Office as Special Projects Manager.

Mr. Gibson explained that he came to work for Mayor Murphy through a mutual business contact with the Mayor and that the first time he met the Mayor was after he was inaugurated. Mr. Romano asked Mr. Gibson why he thinks Mayor Murphy chose him to be on his staff. Speculating, Mr. Gibson stated that it was probably because of his background in City government and because Mr. Gibson had a political science degree. Also, Mr. Gibson noted that he had previously worked for an elected official, former Council member William Jones, between 1985 and 1987.

Mr. Gibson explained that the Mayor had hired him as a policy advisor and that the Mayor had initially asked him to address issues relating to the budget, water, ballpark project, library project and the Chargers football team. As time went on, the Mayor also assigned to Mr. Gibson issues concerning downtown San Diego, the tourism industry, the Convention Center, redevelopment, labor, and the Airport Authority. The Mayor had initially hired one other policy advisor, Tom Story, who dealt primarily with different issues, relating to land use, clean water, transportation and the environment.

Mr. Romano inquired about the rest of the Mayor's staff when the Mayor first came into office. Mr. Gibson explained that there were about twenty-five other staff members, and the general hierarchy was as follows: Chief of Staff; Deputy Chief of Staff and two Policy Advisors; Director of Protocol; Press Secretary; Director of Scheduling; Director of Community Affairs (who had about eight assistants for the different districts of the City); and Military Affairs liaison. Mr. Gibson stated that John Kern served as Mayor Murphy's Chief of Staff most of the time he was in office, and Tom Story took over the position in the last few months of the Mayor's tenure. Paula Avila served as Deputy Chief of Staff for the length of Mayor Murphy's time in office. Mr. Gibson explained that he and Story, in their capacity as policy advisors, always reported to the Chief of Staff and duplicated any conversations they had with the Mayor with the Chief of Staff.

Mr. Romano asked Mr. Gibson how a particular issue was presented to him by the Mayor or the Chief of Staff and, generally, how he managed the issue. Mr. Gibson proffered the ballpark project as an example. Mr. Gibson explained that he was involved with the management-side of the process, serving as the "eyes and ears" for the Mayor. Mr. Gibson worked closely with the management staff from the City Manager's Office and would give Kern updates, though he rarely dealt with the Mayor directly in providing this information. Mr. Gibson would also staff the meetings with the Mayor on ballpark-related issues. Mr. Gibson explained that there were very few written reports issued regarding the ballpark project, as most of the discussion was face-to-face. Mr. Gibson noted that this came to be the way the Mayor generally ran the office. With regard to Mr. Gibson's interactions with the City Manager's Office on the project, he mostly worked with Deputy City Manager Bruce Herring on

management issues and Deputy City Manager Pat Frazier on financial issues (for most of the period Mr. Gibson worked with Frazier on this project, she was Deputy Chief of City Finances).

Ballpark Project

Mr. Romano inquired about community reaction to the ballpark, in particular whether Mr. Gibson was aware of negative comments about the project. Mr. Gibson stated that complaints would have gone through the Mayor's Community Outreach staff. However, Mr. Gibson pointed out that the public had already voted to approve the project, and that he and the rest of the Mayor's Office staff were just implementing the will of the people. Asked who would have been in charge of bond offering disclosure issues in connection with the project, Mr. Gibson stated it would have been the City Attorney's Office and, in particular, most likely Assistant City Attorney Les Girard.

Mr. Gibson described the project as "dormant" at the time he began working for the Mayor, as the project had been suspended because of a lack of sufficient funding. Mr. Gibson acknowledged that it was obvious when the Mayor took office that the project's funding had run dry. Mr. Gibson did not know how the project had previously been intended to be funded at that time, but he believed that it was to have been a joint public-private-funded venture. Mr. Gibson stated that, based on his current position, he knows Petco Park to be funded 70% by the City and 30% by the Padres. Mr. Romano clarified that he was more interested in what Mr. Gibson knew at the relevant period being discussed rather than what he knows now in hindsight, though he should just make clear when he is making this distinction. Mr. Gibson acknowledged he understood.

Mr. Romano asked Mr. Gibson about his general awareness of the bond issuance in connection with the ballpark project. Mr. Gibson stated that he was aware of this financial issue at the time, and acknowledged that he was involved from the outset of Mayor Murphy's administration in constructing a financial plan to fund the ballpark project. Mr. Gibson explained that he managed the Mayor's staff in finding potential sources of funding, including working with the Centre City Development Corporation ("CCDC"), an agency that spearheads the development of downtown. The CCDC is a quasi-governmental agency which is controlled by the City Redevelopment Agency. City Council has final approval of all decisions that come out of the CCDC and the Redevelopment Agency. Mr. Gibson noted that he also thought that the Port was involved in the funding plan, contributing approximately \$21 million for parking and other aspects of the project. When a final financing plan was constructed, the plan was published and Mayor Murphy held a press conference, presenting charts explaining how the City proposed to complete the project. Council later approved the proposal.

Bond Issuances

As for the actual bond issuance for the ballpark project, Mr. Gibson explained that he was not involved in preparing or reviewing the financing documents. He was not certain as to who was involved in this process. He surmised that it would most likely have been officials in the Financing Services Department, the City Treasurer's Office, the City Auditor & Comptroller's Office, the City Attorney's Office and outside bond counsel working together. Mr. Romano asked generally if Mr. Gibson recalled a memorandum prepared by Bryan Cave or a closed-session meeting with Girard regarding disclosure duties. Mr. Gibson did not recall

either, explaining that, under the Brown Act, staff members of the Mayor are not allowed to attend closed-session meetings. Also, all those in attendance at such meetings are prohibited from disclosing what was discussed during the meeting to anyone not in attendance. Mr. Romano asked Mr. Gibson what types of issues were discussed in closed-session. Mr. Gibson responded that, generally, issues related to pending litigation, potential litigation and labor negotiations were reserved for closed-session before they were presented in open-session for debate and approval. Mr. Gibson further stated that he did not discuss with Girard the type of preparation that would be needed in issuing the ballpark offering, as this was not the type of thing in which Mr. Gibson would have been involved.

Mr. Romano asked Mr. Gibson about his recollection of the scandal in early 2001 involving a Council member receiving gifts from the Padres. Mr. Gibson recalled the Valerie Stallings matter, noting that Council had to revote on the ballpark project after Stallings resigned. Mr. Gibson stated that after this incident the City was much more sensitive to how ballpark-related matters were handled. The City made a concerted effort to preclude "tainted" votes in favor of the ballpark and proceeded with an "abundance of caution to protect themselves from legal action."

Mr. Gibson was asked about his involvement in the Mayor's review of bond offering disclosure documents. Mr. Gibson explained that he was not involved in reviewing such documents nor did he recall ever seeing one. At this point, Mr. Romano showed Mr. Gibson the May 29, 2003 Balboa Park Refunding bond issuance offering statement (Exhibit 1). Mr. Romano noted that this was just an example of an offering statement and not the one used in connection with the ballpark bond offering. Mr. Gibson stated that he had seen a document like the one presented, but he was not sure whether it was during his time in the Mayor's Office. Mr. Romano inquired about the procedure followed by the Mayor in reviewing bond offering statements. Mr. Gibson believed that the Mayor relied upon City staff to review the documents and presumed that the Mayor delegated this issue down to his staff. Mr. Gibson did not know exactly who would have reviewed these documents for the Mayor, but he presumed it would have been a "high level City official," such as Girard or Frazier. Mr. Gibson believed that he never saw a copy of the ballpark offering statement, as he did not have a background to review such documents. Mr. Gibson stated that, as far as he knew, no members of the Mayor's staff were charged with the duty of reviewing bond disclosures nor did any staff members have expertise in this regard. Asked why he would have seen an offering statement, as he noted previously that he had, Mr. Gibson explained that it may have been in connection with the effort at a second financing for the ballpark in late 2003, at which point he may have been given a copy of a draft of the disclosure statement.

Blue Ribbon Committee Report

Mr. Romano asked Mr. Gibson about his recollection of Mayor Murphy's creation of the Blue Ribbon Committee (the "BRC" or "Committee"). Mr. Gibson explained that the BRC was a goal of the Mayor's when he took office, deriving from the Mayor's campaign platform that the City's finances were in disarray and needed to be studied in depth. Mr. Gibson managed the implementation of the BRC project. He met with potential appointees, provided political insight about who could bring certain areas of expertise to the Committee, attended most meetings of the Committee, and answered questions regarding the Mayor's expectations of

the Committee's investigative time frame. Mr. Gibson recalled that the announcement of the Mayor's intention to form the BRC was in Mayor Murphy's January 2001 "State of the City" Address. Mr. Gibson believed that the Committee was appointed and approved not long after the Mayor's speech, possibly in February 2001.

Mr. Romano asked Mr. Gibson if the Mayor had contact with any members of the BRC. Mr. Gibson stated that the Mayor did not interact with Committee members in their capacity on the BRC. However, the Mayor knew several members of the Committee in a social context -- such as April Boling, who had served as the Mayor's campaign treasurer -- and thus may have interacted with them about other issues. At this point, Mr. Gibson stressed that he believed Mayor Murphy to be a man of integrity. When the Mayor established this independent committee, he would have strived to protect its independence and avoid even the potential appearance of partiality. Mr. Gibson believed that Mayor Murphy would have regarded discussions with Committee members about the inner workings and progress of the BRC as inappropriate.

Mr. Gibson explained that City Auditor & Comptroller Ed Ryan and Assistant City Auditor & Comptroller Terri Webster were in charge of staffing the Committee, and at least one of them attended each of the BRC's meetings. One of their assistants would take the minutes of the meeting. Mr. Gibson explained that Ryan and Webster were responsible for the actual drafting of the BRC Report, as directed by the Committee members. After a "first stab" was taken by Ryan, the different sections of the Report were filtered down to specific members of the Committee and their staff to refine. Mr. Gibson did not recall the Committee ever having executive sessions excluding Ryan and Webster.

Mr. Romano inquired about the time line for the publication of the BRC Report, asking in particular why the Report was not issued in September 2001 as originally planned. Mr. Gibson first posited that the events of 9/11 delayed the investigation. However, when pressed by Mr. Romano, Mr. Gibson could not explain how 9/11 had more than a temporary impact on the schedule. Mr. Gibson also explained that Ryan had some concerns about the potential impact of the BRC Report on the "financial community," in particular the bond market and ratings agencies. Mr. Gibson recalled hearing, either at a BRC meeting or during a conversation with Ryan and Kern, that Ryan believed that many of the "well-meaning volunteers" of the BRC had a limited understanding of the financial problems of the City. In particular, Mr. Gibson recalled that Ryan disagreed with Richard Vortmann about many of the issues concerning the Retirement System and that Ryan believed it was not so important to focus on these issues. Mr. Gibson believed that this exchange took place at a BRC meeting, though he could not recall which one, and that this general disagreement was one of the reasons the BRC Report was delayed. However, when Mr. Romano later asked Mr. Gibson if the Report was delayed by the retirement issue, Mr. Gibson said that he could not be sure about that specifically.

Mr. Romano later asked directly whether the ballpark issuance had an impact on the timing of the completion of the BRC Report. Mr. Gibson recalled that the ballpark offering was in February 2002, but he did not specifically associate the delay of the BRC Report with this offering. However, he did recall that the delay may have had something to do with rating agencies (in addition to the two reasons he discussed above). Mr. Gibson ultimately clarified that he did understand at the time that there were concerns about the negative impact the BRC

Report may have on the City's current bond ratings. He further explained that he perceived a general sentiment that such negative bond ratings could eventually "implicate" the ballpark bonds when they were issued. At no point in time, however, did he ever explicitly hear that the Report was delayed "because of this" potential chain of events. Further, he did not specifically recall discussion of the pension issue as the issue that could have a negative impact on the bond ratings, as he understood the retirement analysis to be a smaller part of the BRC Report. Mr. Gibson did not recall discussion of the post-retirement healthcare benefit liability in the BRC Report.

Later in the interview, Mr. Romano showed Mr. Gibson an April 29, 2002 letter from Vortmann to the members of the BRC and Mr. Gibson (Exhibit 2). Mr. Gibson did not recall receiving this letter at the time, though remarked it was familiar to him and likely was shown to him by the U.S. Attorney's Office a few years ago. Mr. Romano read to Mr. Gibson language from the letter indicating that the Committee had been concerned about the effect of its findings on the ballpark financing and the City's credit ratings. Mr. Gibson acknowledged that this concern over the impact of the BRC Report on the ballpark offering was one issue that he and Vortmann had likely talked about during that time period.

Mr. Romano asked Mr. Gibson if he had a recollection of anyone trying to tone down Vortmann's concerns about the Retirement System. Mr. Gibson recalled that either Ryan or Webster was "adamant about talking to Vortmann and sharing their perspective" about the extent of the problem. They believed that he was exaggerating the pension problems. Mr. Gibson noted that he believed Ryan and Webster respected Vortmann for his success in the business world, but thought that he had less experience to deal with the complex issues underlying the Retirement System. Nonetheless, he recollected that there were efforts to persuade Vortmann – more than likely behind-the-scenes – that he was wrong.

Mr. Romano asked Mr. Gibson whether he was at the February 27, 2002 Rules Committee meeting at which the BRC presented its Report. Though he could not specifically recall the meeting, Mr. Gibson said he was almost certain that he would have been there since it was a public meeting at which the Mayor presided. Mr. Romano showed Mr. Gibson the final version of the BRC Report (Exhibit 3). Mr. Romano asked Mr. Gibson if he was aware that some of the information in the Report was inaccurate, in particular pointing to the 97.4% funding ratio on page twenty-two of the Report. Mr. Gibson explained that he was not aware at the time the Report was published that the actuary had released a new valuation for the pension fund that pegged the funding ratio at 88.9% as of June 30, 2001. He could not recall when he first learned this information. Mr. Gibson did not know how the Committee got its information from the SDCERS Board. In particular, he was not aware of whether the BRC got pension information from Webster, SDCERS Actuary Rick Roeder or some other source. Mr. Gibson did not think the BRC had any limitations in obtaining information from the SDCERS Board, but he said that he was just speculating. Asked whether Ryan or Webster was on the SDCERS Board at the time of the Report's presentation, Mr. Gibson could not remember at what point Webster replaced Ryan on the SDCERS Board.

Mr. Gibson was asked about the reaction of the Mayor's Office to Ryan's statement during the February 27, 2002 Rules Committee meeting that the funding of the Retirement System was intentionally being put off to future periods. Mr. Gibson recalled that, in

February 2002, there were "no alarm bells going off" in the Mayor's Office and the same would likely have been true even when they became aware of the 88.9% funding ratio.

Mr. Romano showed Mr. Gibson an April 4, 2002 memo from Mayor Murphy to City Council regarding the Rules Committee's actions in response to the BRC presentation (Exhibit 4). Mr. Gibson recalled a meeting with the City Auditor and Comptroller's Office -- in particular, with either Ryan or Webster -- at which this memo was discussed. Mr. Romano asked Mr. Gibson about whose decision it was to refer the pension funding issue to the SDCERS Board, considering the fact that the Board did not play a role in funding benefits, and only administered them. Mr. Gibson could not recall the thought process behind this decision and noted that he was not consulted on this issue. After Mr. Romano asked whether the rationale may have been to extend the delay of responding to the problem by initiating another long-term study, Mr. Gibson explained that he believed Mayor Murphy often referred complex matters to experts for advice and that this was not an uncommon response. Mr. Gibson stated that he did not recall the question of how the SDCERS Board would deal with the under-funding issue being discussed in the Mayor's Office at the time.

Vortmann's Concerns Regarding the BRC Report

Mr. Romano showed Mr. Gibson a letter from Vortmann to Mayor Murphy regarding his concerns about the potential "spin" of the BRC's conclusions (Exhibit 5). Mr. Gibson recalled seeing the letter, but did not know whether the Mayor ever received it. He stated that he gave it to Kern, who most likely would have given it to the Mayor. Mr. Gibson could not recall any specific discussion about the concerns articulated by Vortmann though he did recall speaking with Vortmann on several occasions. Mr. Gibson pointed out that Vortmann was appointed to the SDCERS Board by the Mayor because he *did* express his concerns about the Retirement System. Mr. Gibson surmised that the decision to appoint Vortmann to the Board was probably made by himself, Kern, Avila and Ryan. Mr. Gibson stressed the fact that Ryan was part of this decision and that, although Ryan disagreed with Vortmann on many issues, he respected the fact that Vortmann was involved and concerned. As for Vortmann's original appointment to the BRC, Mr. Gibson presumed that he likely volunteered and was chosen like the rest of the members of the BRC.

Mr. Romano directed Mr. Gibson's attention to page 2 of Vortmann's April 29, 2002 letter (Exhibit 2), and in particular to Vortmann's concerns about exacerbating the problems with the pension fund by granting increased benefits to the labor unions and pushing funding costs further into the future. However, Mr. Gibson did not recall Vortmann's concerns regarding the pending labor negotiations leading to more scrutiny being placed on the pension issue in the Mayor's Office.

SDCERS Response to the BRC Report

Mr. Romano showed Mr. Gibson a PowerPoint presentation apparently given by the SDCERS Board at the February 12, 2003 Rules Committee meeting (Exhibit 6). Mr. Gibson did not recognize the slide show, though he believed that he was likely present at the meeting. Mr. Romano pointed to a slide which reflected that the funding ratio had gone down to 77.3% by February 2003. Mr. Gibson recalled hearing this number, but explained that he did not believe this led to any significant anxiety in the Mayor's Office at the time. Mr. Romano showed Mr.

Gibson a February 12, 2003 memo from SDCERS to the Rules Committee (Exhibit 7) which contained much of the same information as the PowerPoint presentation. Mr. Gibson did not recall seeing this memo and noted that it was marked "Confidential." He could not recall whether this memo was distributed to the Mayor and City Council.

Pension Reform Committee

Mr. Romano showed Mr. Gibson two draft memorandums from Uberuaga to the Mayor and City Council, both dated "June __, 2003" (Exhibits 8 and 9). Mr. Romano asked Mr. Gibson whether he recalled if the City Manager's Office ever responded to the SDCERS presentation at the February 12, 2003 Rules Committee meeting or whether the issue just died after the SDCERS response. Mr. Gibson could not recall the events surrounding the City Manager's Office's response, but he did recall the Mayor's decision to create the Pension Reform Committee (the "PRC"). Mr. Gibson explained that he was involved in choosing the members of the PRC, which was charged with collecting all relevant information from SDCERS staff members, Roeder and any other relevant sources and determining whether there was an under-funding issue. Mr. Romano asked whether the PRC reached a conclusion, to which Mr. Gibson responded that he thought they reached some conclusions and that "someone has to lead the charge with these issues."

Mr. Romano showed Mr. Gibson the September 9, 2003 City Council Resolution establishing the PRC (Exhibit 10). Mr. Gibson recalled that it took a long time for the PRC to issue a report, possibly as far as the next year's election. Mr. Gibson remarked that the focus of the Mayor's Office was on getting re-elected. Mr. Romano asked Mr. Gibson whether, looking at the progression of studies of the pension issue from the time the Mayor was elected to the creation of the PRC, Mr. Gibson thought that the process was on a fast-track. Mr. Gibson acknowledged that, in hindsight, the process was clearly not undertaken in an efficient manner. Mr. Romano asked Mr. Gibson if he thought there may have been a decision by the Mayor's Office not to pursue this issue quickly. Mr. Gibson responded that he did not believe so. Mr. Romano asked Mr. Gibson whether there was a recognition within the Mayor's Office that any resolutions to the pension problem would be politically expensive. Mr. Gibson did recall that this issue was discussed at some point.

Mr. Gibson recalled that he was certain that an actual report was issued by the PRC before the November 2004 election. He clarified that the PRC put together a tentative unwritten report for City Council, requesting Council to take action on two specific items. He believed these items had to do with the structure of the SDCERS Board and the amortization formula applied to the fund's UAAL. He recalled that both of these items were approved. He could not recall exactly when the written report was issued.

Labor Negotiations and Use of Surplus Earnings

Mr. Romano asked Mr. Gibson about his general understanding of MP1 and MP2. Mr. Gibson recalled that he became aware of MP2 when it was approved by City Council and he was not present at any closed-session meetings discussing the proposal beforehand. Mr. Gibson understood that MP2 created an "enhancement of benefits to City employees to their pension," but he did not recall the details of MP2's effect on the City's contributions to the pension fund.

With regard to surplus earnings of the pension fund, Mr. Gibson explained that he got an overview of the use of surplus earnings from Human Resources Manager Cathy Lexin during the 2004 campaign season. Lexin provided Mr. Gibson with an overview of a number of pension-related issues, as Mr. Gibson would be prepping the Mayor on these matters for his campaign. In particular, Lexin explained to Mr. Gibson how the "thirteenth check" was appropriated out of surplus earnings in years where there was sufficient excess funds. Mr. Gibson recalled that he did not take a very active role in the campaign, only volunteering his time on weekends.

Mr. Romano asked Mr. Gibson about his involvement in labor negotiations preceding the adoption of MP2. Mr. Gibson stated that he was not involved in these negotiations and could not recall who from the Mayor's Office would have been. He believed that the City Manager's Office primarily handled this issue and reported to the Mayor in closed-session, which Mr. Gibson would not have been able to attend. Mr. Gibson speculated that the Mayor would have been advised on labor negotiation issues by the City Attorney's Office or the Labor Relations Manager in closed-session.

Mr. Romano showed Mr. Gibson a June 10, 2002 email from Vortmann to Mr. Gibson in which Vortmann expressed reservations about the City's grant of increased benefits (Exhibit 11). Mr. Gibson recalled receiving this letter and providing a copy to Kern. Mr. Gibson could not recall discussing the issue with Kern, but remembered that Kern directed him to contact Vortmann and determine whether Vortmann would support the City's eventual proposal in his capacity on the SDCERS Board. Mr. Gibson recalled the two-pronged nature of the proposal, such that the City would have to approve one part and SDCERS the other. He could not recall the contingent aspect of the scheme, but recollected his role in ascertaining the level of support for the proposal.

Mr. Romano showed Mr. Gibson a June 19, 2002 email from Mr. Gibson to Deputy City Manager Bruce Herring in which Mr. Gibson inquired whether Herring and "Ed" had spoken with Vortmann (Exhibit 12). Mr. Gibson explained that "Ed" would have referred to Ed Ryan. Mr. Gibson could not recall what they would have been discussing with Vortmann. Mr. Romano asked Mr. Gibson whether Vortmann was ever "persuaded" to support the City's proposal. Mr. Gibson responded that he could not recall anyone ever trying to "persuade" Vortmann but rather only trying to "inquire" about his position. Mr. Gibson said that he did not have a sufficient knowledge of the details of the proposal to inquire about this issue and does not recall whether there was a response to this email.

MP2 and Shipione's Concerns

Mr. Romano showed Mr. Gibson a May 23, 2002 letter from SDCERS Board member Diann Shipione to Mayor Murphy requesting a comprehensive audit of the Retirement System (Exhibit 13). Mr. Gibson could not recall ever seeing this letter.

Mr. Romano showed Mr. Gibson a November 18, 2002 letter from Shipione to Mayor Murphy voicing concerns about the adoption of MP2 (Exhibit 14). Mr. Gibson did not recall receiving this letter, but remembered that the Mayor did receive it and Mr. Gibson referred the matter to Assistant City Manager Lamont Ewell. Mr. Romano asked Mr. Gibson about his opinion of Shipione at the time. Mr. Gibson explained that he believed there was a "consensus

opinion" among the people with which he interacted that Shipione was a "dissenter." He believed the tone and manner with which she presented her concerns made it difficult to get to the heart of the issue. In particular, he believed that people thought her tone was "confrontational" and "accusatory," and that she "would rock people back on their heels" rather than engage them in a dialogue. He believed she was an "outsider" who "did not inspire cooperation." Mr. Romano later asked Mr. Gibson if, in retrospect, he believed Shipione's comments were valid. Mr. Gibson responded affirmatively.

Mr. Romano showed Mr. Gibson a December 6, 2002 memorandum from Ewell to the Mayor and City Council responding to Shipione's November 18, 2002 letter (Exhibit 15). Mr. Gibson said the document looked "vaguely familiar," though he could not recall discussing the matter with Ewell either before or after he had put his response in writing. Mr. Gibson did not recall discussing the matter with the Mayor either, noting that the issue was a "referral" out of the Mayor's Office.

Mr. Romano showed Mr. Gibson the minutes of the November 18, 2002 City Council meeting (Exhibit 16). Mr. Gibson explained that he would have normally had the opportunity to review this issue before the meeting when the supporting documentation was sent to the Mayor's Office on Thursday or Friday of the previous week. However, since this was a closed-session action being put up for adoption, this would not have been his issue even though this would have generally been his policy area. Mr. Romano asked Mr. Gibson why the SDCERS Board indemnification provision was adopted. Mr. Gibson said he did not know. Mr. Romano pointed out that the provision was approved by a vote of eight-votes-to-one and asked if he recalled who voted against the proposal. Mr. Gibson surmised that it was likely Councilwoman Donna Frye, as she voted against the grain on a large number of issues. Mr. Gibson recalled that Frye campaigned on Shipione's comments.

Mr. Romano explained that in Ewell's response to Shipione, he described MP2 as a transition period to full funding. Mr. Gibson again explained that he did not have a solid understanding of MP2 or its effect on the City's contribution level. He could not recall whether there was a sense that a pending crisis was relieved with its passing.

Mr. Romano showed Mr. Gibson a May 24, 2004 email from Kern to Frazier and Mr. Gibson concerning Kern's understanding that some of Roeder's past actuarial calculations may have been misleading (Exhibit 17). Mr. Gibson explained that Kern's inquiry was most likely directed at Frazier and that Kern copied Mr. Gibson on the email just to keep him informed. Mr. Gibson could not recall the first time he learned of criticisms of Roeder. Mr. Romano asked Mr. Gibson if he understood at the time that, in terms of actuarial calculations, MP2 under-funded the system. Mr. Gibson responded that it was not until months later when the issue was more prevalent in the media that he understood this aspect of the proposal.

Presidential Leave

Mr. Gibson explained that he did not have any understanding of this benefit until he spoke with Lexin during 2004 in preparation for the Mayor's re-election campaign. Lexin explained the basic facts regarding the benefit but did not give Mr. Gibson her opinion of why it was appropriate to have granted the benefit. She provided him with a written description of the benefit and its costs and impact on the Retirement System.

Legislative Officers' Retirement Program

As with Presidential Leave, Mr. Gibson did not have an understanding of this program prior to discussing the issue with Lexin in 2004.

Purchase of Service Credit and Ron Saathoff

Mr. Gibson did understand this benefit prior to meeting with Lexin, as he had purchased years under this program after the benefit became available after MP1. He understood the benefit as allowing a City employee to "maximize" five years of service so he could have more time under his belt toward his pension calculation when he retired. He recalled that he understood that an employee could purchase these years at cost.

Mr. Romano asked Mr. Gibson whether he understood, at the time of MP2, that SDCERS Board member and Firefighter Union President Ron Saathoff received a special benefit from the overall proposal. Mr. Gibson recalled that he was not aware of this at the time of MP2 but probably learned about it from Lexin in 2004. He did not recall discussions in 2002 of Saathoff or Webster getting a special benefit. Mr. Gibson noted that he did learn about the exemption from the 90% cap on retirement benefits for those who started working for the City before the age of twenty-four from a Lexin email. He explained that he qualified for this benefit and did not respond to this email -- which was addressed to a number of City employees and notified them that their "ticket to the gravy train is set" -- as he wanted to steer clear of the issue.

Mr. Romano showed Mr. Gibson a September 28, 2004 email from Mr. Gibson to Lexin requesting information about the City Employee Retirement buyback program (Exhibit 18). In particular, Mr. Gibson's email inquired about how the cost of service credits were calculated, as Mr. Gibson understood at that point that it had been below cost until the SDCERS Board changed the rate in August 2003. Mr. Gibson explained that he did not fully understand this benefit until Lexin provided a memorandum in response.

Mr. Romano showed Mr. Gibson an October 7, 2004 transcription of a voicemail message from SDCERS General Counsel Loraine Chapin to Mr. Gibson (Exhibit 19). Mr. Gibson explained that, similar to the above email and attached memorandum, the information conferred in the voicemail was used to prepare the Mayor for the 2004 campaign. Mr. Gibson could not recall how he delivered the information in the voicemail to the Mayor.

Ballpark Refinancing

Mr. Romano asked Mr. Gibson if he was involved in discussions regarding the preparation of the ballpark refinancing bond issuance in 2003. Mr. Gibson responded that he was not and that he does not recall ever meeting or speaking with outside bond counsel Paul Webber.

Gleason

Mr. Gibson did not recall being involved in the response to the *Gleason* litigation. He believed that the City Attorney's Office primarily advised the Mayor on this issue. He did

not recall being privy to the advice provided to the Mayor by Luce, Forward, Hamilton & Scripps LLP.

Wastewater

Noting that Mr. Gibson had earlier stated that he provided the Mayor advice on water policy issues, Mr. Romano asked if this would have included sewer rate issues. Mr. Gibson said that sewer issues were separate from water supply issues and thus someone else would have been responsible for that policy area. He surmised that Story would have likely been in charge of sewer-related issues. Mr. Romano asked Mr. Gibson if he was aware of how the City received outside funds for its public utility projects. At this point, Mr. Gibson clarified that his knowledge on this subject derives from his former position as Business Operations Manager with the City Water Department. He explained that he was aware that the City raised funds both through Federal and State grants and through raising public funds. He did not believe that the grants were usually sufficient for public projects.

Mr. Romano asked Mr. Gibson about his water-related duties in the Mayor's Office. Mr. Gibson explained that he staffed water-related meetings and provided advice to the Mayor. Mr. Romano asked Mr. Gibson if he recalled issues related to water rates being subject to Proposition 218. Mr. Gibson responded that he had only had a vague recollection of this issue while in the Mayor's Office, but he did recall that water rates went up each year the Mayor was in office. He recalled that large water users often lobbied the Mayor on behalf of commercial users.

Remediation

Mr. Romano explained to Mr. Gibson that the City had adopted a draft ordinance contained in V&E's first investigative report and asked him if he had any specific suggestions the Audit Committee should consider in terms of improving the City's disclosure of financial information. Mr. Gibson said he did not have any suggestions.

WF&G